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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1669

JAMES E. GUSTAFSON,

Petitioner,

VERSUS

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the Supreme Court of Florida, to which the Petition for Writ of Certiorari is directed, is reported at 258 So.2d 1 (Fla.1972).

The opinion of the District Court of Appeal of Florida, Fourth District, which was quashed by the Florida Supreme Court's decision, is reported at 243 So.2d 615 (4DCA Fla. 1971). Both opinions are contained in the Appendix of the Petition.

JURISDICTION

The decision of the Florida Supreme Court was rendered on January 26, 1972. Petitioner invokes jurisdiction of this Court under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether a police officer may search the driver of an automobile, when the driver has first been legally stopped and has thereupon been

lawfully arrested for failure to have a driver's license in his possession.

STATEMENT

In the early morning hours of January 12, 1969, a police officer in Eau Gallie, Florida, observed that the automobile which Petitioner was driving was weaving across traffic lanes. The officer stopped the car, to find out if Petitioner "had been drinking or something."

When Petitioner informed the police officer that he did not have a driver's license with him, the officer arrested Petitioner for the failure to so produce a driver's license, in accordance with Florida Statutes §322.15.

A search of Petitioner's person, pursuant to the aforementioned valid arrest, revealed that a cigarette package contained several marijuana cigarettes. Petitioner was then charged with possession of marijuana.

A non-jury trial on the marijuana charge culminated with a finding of guilt. Adjudication was withheld, and Petitioner was placed on probation.

Appeal was then taken to the District Court of Appeal of Florida, Fourth District. The Appellate Court reversed, holding that the officer's search of Petitioner was unreasonable. Gustafson v. State, 243 So.2d 615 (4DCA Fla. 1971).

Thereupon, the State of Florida sought certiorari in the Florida

Supreme Court. The State's highest Court granted the writ and quashed the opinion of the Fourth District Court of Appeal. State v. Gustafson, 258 So.2d 1 (Fla. 1972).

While clearly not condoning unreasonable searches when there is no reason therefor, the Florida Supreme Court held that a search incident to a lawful arrest must not be limited solely to fruits of the particular crime for which the individual was arrested.

ARGUMENT

The crucial question in the case at bar can best be approached by a brief recital of the steps leading to the search of Petitioner.

The initial query to be answered

must be whether or not the police officer had a right to stop Petitioner's automobile. The policeman noticed Petitioner's car crossing traffic lanes; at that point, the officer had a reasonable suspicion that the crime of driving while intoxicated[1] might have been committed. The rationale expounded by this Court in Terry v. Ohio, 392 U.S.1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) allows that police are permitted to stop a person and detain him briefly upon the suspicion of the individual's involvement in a criminal activity. The right to detain on less than probable cause has been applied to the stopping of

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[1]Florida Statutes §317.201

automobiles, in Capitoli v. Wainwright, 426 F.2d 868 (5th Cir. 1970), cert. denied, 400 U.S. 906, 91 S.Ct. 148, 27 L.Ed.2d 144 (1970).

Once the law enforcement officer stopped Petitioner, there is no doubt that the officer was authorized by Florida law to ascertain whether or not the driver had a driver's license in his possession.[2]

Having failed to produce a driver's license, Petitioner was guilty of a misdemeanor under the last aforementioned Florida statute. A peace officer is expressly authorized to arrest without a warrant when a misdemeanor is committed in his presence.[3]

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[2] Florida Statutes §322.15

[3] Florida Statutes §901.15(1)

The arrest of Petitioner was lawful, therefore, and is not questioned before this Court.

The constitutionality of the search of Petitioner's person after the above arrest can now be placed into proper perspective. Petitioner's emphatic reliance on Terry v. Ohio, supra, must be scored by Respondent. Terry deals with the permissible extent of a search conducted pursuant to a stop and frisk. The case at bar, on the other hand, involves a search pursuant to a valid arrest.

Petitioner's position is that a search after a lawful arrest is to be limited to fruits of the particular crime for which the arrest was effectuated.

A better rationale has been set forth by the Florida Supreme Court in their decision below. The Court explicitly allowed that a routine stopping of a motorist does not normally occasion any search, and that when a person is stopped in a vehicle merely as a pretext for a warrantless search, the search is unreasonable.

The Florida Supreme Court held, however, that once a lawful arrest has been made, a reasonably ensuing search is proper without regard to whether the crime in question and the material ultimately seized are related.

The foregoing decision is eminently correct, and is in accord with

prior decisions of this Honorable Court. The Fourth Amendment right does not grant immunity from search and seizure incident to lawful arrest. Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). Reasonable search and seizure after a lawful arrest may be carried out even if the articles seized are instruments of the commission of a wholly unrelated offense. Abel v. United States, 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed.2d 668 (1960), rehearing denied, 362 U.S. 984, 80 S.Ct. 1056, 4 L.Ed.2d 1019 (1960). Nor does the Fourth Amendment prohibit, incident to a lawful arrest, the seizure of any material of which possession itself is proscribed. See 79 C.J.S. Searches and Seizures §26, and cases

cited therein.

Based on the foregoing authority, it is apparent that the decision below in the Florida Supreme Court was correct. The question presented by Petitioner is neither vital nor novel. No great reason exists for the granting of a writ of certiorari, and the writ should be denied.

CONCLUSION

On the basis of the foregoing argument and legal authority, Respondent respectfully urges that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief for Respondent in Opposition has been furnished to Honorable Michael F. Cycmanick at Law Offices of James M. Russ, 441 First Federal Building, Orlando, Florida 32801, by mail this 6th day of October, 1972.

Fredric J. Scott

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